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173 Fed. 227, involved these principles. The defendants, editors of a newspaper in Indiana, were indicted in Washington, D. C., on the charge of publishing there an alleged criminal libel contained in fifty copies of the said newspaper sent through the mails from Indiana to subscribers in Washington. On an application for an order for the removal of the defendants to Washington for trial, the court refused the order on the ground that there was but one publication and, since that was in Indiana, there was no crime in Washington.

The circulation of some copies of the paper in a jurisdiction other than that of the publication of the paper presents a difficult question. On the theory that every copy of libelous matter constitutes, when published, a separate libel the decision is unsupportable. Moreover, in the case of newspapers it has been held that a criminal libel is committed in every jurisdiction in which a copy is received and read.[16] On the theory that the publication of an edition of a newspaper is a single composite act, the reading of a single copy completes the offense so that the remaining copies merely increase its magnitude; the readers only are increased in number. The principal case, apparently adopts this view, but extends it, by disregarding the fact that some of these readers were in another jurisdiction. Only if this disregard is justifiable does the court seem correct in holding that there was no publication in Washington, the jurisdiction into which some copies were forwarded from Indiana. However, let it be assumed with the court, that the libel was published only in Indiana and that the crime was there complete. It has been suggested that a newspaper libel complete in one jurisdiction is a continuing crime in another in which some copies actually circulate and is there cognizable as a crime,[17] since a crime complete in one jurisdiction is punishable in any jurisdiction in which its effects continue.[18] Accordingly, it would seem that there was in Washington an offense sufficient to support the indictment so that the defendant was removable to that jurisdiction for trial.

EXECUTION OF A PAROL TRUST BY CANCELLING THE DEED CREATING IT.—A recent New Jersey case, *Lake* v. *Weaver* (N. J. 1909) 74 Atl. 451, suggests the possibility of executing a parol trust in realty through the destruction, by the trustee, of the deed creating it. In general the statute of frauds makes unenforceable parol trusts in lands, but constructive trusts are excepted.[1] Accordingly, a conveyance untainted by fraud or mistake from A to B, on a parol trust for A, by a deed absolute on its face, vests an absolute estate in B.[2] On strict principle, the fraud or mistake accompanying such a transaction which is sufficient to raise a constructive trust is limited to that involved in the procurement of an instrument.[3] However, in some jurisdic-

[16]Comw. *v.* Blonding (Mass. 1825) 3 Pick. 304; Baker *v.* State (1895) 97 Ga. 452; State *v.* Kountz (1882) 12 Mo. App. 511; *In re* Buell (1875) 3 Dill. 116; 2 Bishop, Crim. Law § 949; Clark & Marshall, Crim. Law 772.

[17]Armour Packing Co. *v.* U. S. (1907) 153 Fed. 1.

[18]Act of March 2, 1867, ch. 169, 14 Stat. L. 484; Armour Packing Co. *v.* U. S. *supra.*

[1]Goldsmith *v.* Goldsmith (1895) 145 N. Y. 313.

[2]Sturtevant *v.* Sturtevant (1859) 20 N. Y. 39.

[3]Rasdall's Adm'rs. *v.* Rasdall (1859) 9 Wis. 379.

tions, a broader rule exists.[4] If a confidential relation exists between A and B, and the enforcement of the statute will result in an unconscientious advantage to B, equity will enforce the trust,[5] and in some jurisdictions the mere refusal by the grantee to perform the trust, resulting in a similar advantage to him, constitutes fraud.[6] It is submitted, moreover, that on this ground alone could equity aid the *cestui* of a parol trust where the mistake occurring in the procurement of the instrument is one of law alone. That it is a ground upon which relief by reformation or cancellation of an instrument given under a mistake of law may be granted is gaining in recognition.[7] It has been argued also that a decree awarding a re-conveyance in recognition of an unenforceable equity in the grantor is not an execution of the parol trust but a restitution to A of what he has parted with on the faith of the invalid agreement, analogous to a quasi-contractual recovery of money parted with under like circumstances.[8] One jurisdiction in cases of void resulting trusts allows a recovery against the grantee, on an implied promise to refund the purchase price.[9] The existence of any logical distinction, moreover, between showing by parol evidence that a deed absolute on its face, is a mortgage, and showing by the same method that it is subject to a trust is doubtful.[10] It is, however, often drawn.[11]

Although a parol trust is unenforceable, it is not a nullity.[12] The trustee may execute it, in which case the benficiaries will be protected. They have an interest which enables them to redeem the land from a tax sale if the trust is executed before the period for redemption has expired,[13] and which is paramount to claims of creditors of the trustee, attaching while he retains title.[14] A transfer to the *cestui* constitutes an execution of the trust, and such a conveyance has been held unimpeachable by a judgment creditor of the trustee, who has an antecedent lien.[15] The underlying reason is that the act of the debtor is not strictly a disposal of his own property, but a restoration to others of what is rightfully theirs.[15] After execution, the beneficiaries are allowed to show by parol that what was apparently the debtor's property, in equity, belonged to them.[16] A conveyance to a stranger also removes the statutory ban and places the proceeds within the reach of the *cestui*.[17] All the foregoing principles generally apply when the parol trust is for a third person.[18]

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[4]Barrell *v.* Hanrick, Adm'r. *et al.* (1868) 42 Ala. 60.

[5]Goldsmith *v.* Goldsmith *supra;* Koefoed *v.* Thompson (1905) 73 Neb. 128.

[6]Davies *v.* Otty (1865) 35 Beav. 208.

[7]Griswold *v.* Hazard (1891) 141 U. S. 260; Park Bros. & Co. L'td. *v.* Blodgett & Clapp Co. (1894) 64 Conn. 28.

[8]6 COLUMBIA LAW REVIEW 326.

[9]Martin *v.* Martin (Ky. 1868) 5 Bush 47.

[10]6 COLUMBIA LAW REVIEW 338; Rasdall's Adm'rs. *v.* Rasdall *supra.*

[11]Union Mutual Life Ins. Co. *v.* White (1883) 106 Ill. 67.

[12]Richmond *v.* Bloch (1900) 36 Ore. 590.

[13]Karr *et al. v.* Washburn (1882) 56 Wis. 303.

[14]Richmond *v.* Bloch *supra.*

[15]Sieman *v.* Austin (N. Y. 1859) 33 Barb. 9.

[16]Hayes *et al. v.* Reger (1885) 102 Ind. 524.

[17]Bork *v.* Martin (1892) 132 N. Y. 280.

[18]Sieman *v.* Austin *supra.*

The solution of the problem presented by the principal case depends upon the effect of the cancellation of an unrecorded deed, as a conveyance. In some jurisdictions the surrender or cancellation of an unrecorded deed with the intent to revest title in the grantor has such an effect.[19] However, the true theory of these decisions, as stated more recently, is the principle of estoppel;[20] the grantee, by voluntarily consenting to the destruction of the deed, is precluded from proving its contents by parol.[21] This doctrine is subject to certain limitations: the parties must be put in *statu quo*,[22] and the rights of third persons must not be prejudiced.[23] In North Carolina, title does not pass until the deed is recorded;[24] the deed itself passes to the grantee only an equitable title which is subject to creditors' claims[25] and this equity may be destroyed by the cancellation of the deed. These views, however, are opposed to the weight of authority, and seem unsound on theory since they permit the transfer of real property by parol agreements.[26] Moreover, the destruction of the deed seems at most a destruction of the evidence of title.[27] However, equitable considerations may arise rendering it unjust for the grantee to have the land. In such cases equity has refused affirmative aid to, and has even decreed positive relief against him. In the one case, a bill by the grantee to establish title was dismissed;[28] in the other, a parol agreement to reconvey, in pursuance of which the mutual surrender of the deed and the consideration took place, was specifically enforced, on the theory of part performance.[29] A Pennsylvania case has decided that the surrender to the grantor, and cancellation of a deed taken on a parol trust for the wife of the grantee, combined with a directed new conveyance to the wife, operates as an execution of the trust.[30] Although this view is sufficient to solve the problem of the principal case in favor of the *cestui*, such a result would seem unattainable under the prevailing view of the effect of the cancellation of an unrecorded deed.

STATUS OF THE MORTGAGEE UNDER HIS MORTGAGOR'S INSURANCE POLICY.—A mortgagor and mortgagee have separate and distinct insurable interests in the mortgaged premises which may be covered in one policy or in separate policies.[1] The mortgagor may insure the premises for their full value and may recover the whole amount, if, at the time of the loss, he has the right of redemption.[2] The mortgagee, however,

[19]Comw. *v.* Dudley (1813) 10 Mass. 411.
[20]Trull *v.* Skinner (Mass. 1835) 17 Pick. 213.
[21]Farrar *v.* Farrar (1827) 4 N. H. 191.
[22]Patterson *v.* Yeaton (1859) 47 Me. 308.
[23]Nason *v.* Grant (1842) 21 Me. 160.
[24]Austin *v.* King (1884) 91 N. C. 286.
[25]Davis *v.* Inscoe (1881) 84 N. C. 396.
[26]Devlin, Deeds § 305.
[27]Tate *v.* Clement *et al.* (1896) 176 Pa. St. 550.
[28]Sanford *et al. v.* Finkle (1884) 112 Ill. 146.
[29]Whisenant *v.* Gordon (1892) 101 Ala. 252.
[30]Barncord *v.* Kuhn (1860) 36 Pa. St. 383.

[1]Honore *v.* Lamar Fire Ins. Co. (1869) 51 Ill. 409, 414.
[2]Jones, Mortgages § 397; Carpenter *v.* Prov. Wash. Ins. Co. (1842) 16 Peters 495, 501.